

The Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures

(Adopted on July 1, 1979, at the Second Session of the Fifth National People's Congress, amended according to the Decision on Amendment to the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures adopted on April 4, 1990, at the Third Session of the Seventh National People's Congress, and amended for the second time in accordance with the Decision on Amendment to the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures adopted on March 15, 2001, at the Fourth Session of the Ninth National People's Congress.)

Article 1: With a view to expanding international economic cooperation and technological exchange, the People's Republic of China permits foreign companies, enterprises, other economic entities or individuals (hereinafter referred to as foreign parties) to incorporate themselves within the territory of the People's Republic of China into equity joint ventures with Chinese companies, enterprises or other economic entities (hereinafter referred to as Chinese parties) on the principle of equality and mutual benefit, and are subject to authorization by the Chinese government.

Article 2: The Chinese government protects, by the legislation in force, the investments of foreign parties, the profits due them and their other lawful rights and interests in equity joint ventures, pursuant to the agreements, contracts and articles of association approved by the Chinese government.

All the activities of an equity joint venture shall be governed by the provisions of the laws and regulations of the People's Republic of China.

The state will not nationalize or expropriate any equity joint venture. Under special circumstances, based on the needs of the public, equity joint ventures may be expropriated under legal procedures and given appropriate compensation.

Article 3: All parties to an equity joint venture shall submit their agreements, contracts and articles of association to the state department in charge of foreign trade and economic cooperation (referred to as the examination and approval authority hereinafter) for examination and approval. The examination and approval authority shall decide whether to approve or disapprove within three months. Once approved, the equity joint venture shall register with the state department for the administration of industry and commerce, and start operation after receiving its business license.

Article 4: An equity joint venture shall take the form of a limited liability company.

In the registered capital of an equity joint venture, the proportion of the investment contributed by the foreign party (parties) shall in general not be less than 25 percent.

The profits, risks and losses of an equity joint venture shall be shared by the parties to the venture in proportion to their contribution to registered capital.

The transfer of one party's share in the registered capital shall be effected only with the consent of the other parties to the venture.

Article 5: Each party to an equity joint venture may contribute cash, capital goods, industrial property rights, etc., as its investment in the venture.

The technology or equipment contributed by any foreign party as investment shall be truly advanced and fit for China's needs. In cases of losses caused by deception through the intentional provision of outdated equipment or technology, compensation shall be paid for the losses.

The investment contributed by a Chinese party may include the right to the use of a site provided for the equity joint venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese party, the venture shall pay the Chinese government a fee for its use.

The aforesaid various contributions shall be specified in the contracts and the articles of association of the equity joint venture, and the value of each contribution (excluding that of the site) shall be ascertained by the parties to the venture through joint assessment.

Article 6: An equity joint venture shall have a board of directors with a composition stipulated in the contract and the articles of association after consultation between the parties to the venture; each director shall be appointed and replaced by his or her own side. The chairman and the vice chairman shall be chosen through consultation by the parties to the venture or elected by the board of directors. If one side of the venture assumes the office of the chairman, the other side shall assume the office(s) of vice chairman. The board of directors shall decide on important issues concerning the equity joint venture on the principle of equality and mutual benefit.

The board of directors is empowered to discuss and decide, pursuant to the provisions of the articles of association of the equity joint venture, all fundamental issues concerning the venture, namely expansion projects, production and business programs, the budget, distribution of profits, plans concerning manpower and pay scales, the termination of business, the appointment or hiring of the president, vice president(s), the chief engineer, the chief accountant and auditors, as well as their functions, powers and remuneration.

The president and vice president(s) (or the general manager and assistant general manager(s) in a factory) shall be chosen from the various parties to the equity joint venture.

Matters concerning the employment, discharge, remuneration, welfare, labor protection, labor insurance, etc., of the workers and staff members of an equity joint venture shall be stipulated according to law through the conclusion of a contract.

Article 7: The workers and staff members of an equity joint venture shall establish their trade union organization in accordance with the law to carry out trade union activities and safeguard their lawful rights and interests.

An equity joint venture shall provide necessary conditions for the venture's trade union to carry out its activities.

Article 8: The net profits of an equity joint venture shall be distributed among the parties to the venture in proportion to their respective shares in the registered capital after the payment of an equity joint venture income tax on its gross profit pursuant to the tax laws of the People's Republic of China and after the deductions therefrom as stipulated in the articles of association of the venture for the reserve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture.

An equity joint venture may, in accordance with provisions of the relevant laws and administrative rules and regulations of the state on taxation, enjoy preferential treatment for tax reduction or exemption.

A foreign party who re-invests any part of its share of the net profit within Chinese territory may apply for the restitution of a part of the income tax paid.

Article 9: An equity joint venture shall, on the strength of its business license, open a foreign exchange account with a bank or any other financial institution, which is permitted by the state agency for foreign exchange control to handle foreign exchange transactions.

An equity joint venture shall conduct its foreign exchange transactions in accordance with the Regulations of the People's Republic of China on Foreign Exchange Control.

An equity joint venture may, in its business operations, obtain funds from foreign banks directly.

All insurance of an equity joint venture shall be furnished by insurance companies within the Chinese territory.

Article 10: An equity joint venture may purchase raw materials, fuels and other goods needed in the authorized business scope in the domestic market or the international market on the principle of fairness and reasonableness.

An equity joint venture is encouraged to market its products outside China. It may distribute its export products on foreign markets through direct channels, its associated agencies or China's foreign trade establishments. Its products may also be sold on the Chinese market.

Whenever necessary, an equity joint venture may set up affiliated agencies outside China.

Article 11: The net profit that a foreign party receives as its share after performing its obligations under the pertinent laws and agreements and contracts, the funds it receives at the time when the equity joint venture terminates or winds up its operations, and the other funds may, in accordance with the foreign exchange regulations, be remitted abroad in the currency or currencies specified in the contracts concerning the venture.

A foreign party is encouraged to deposit in the Bank of China the foreign exchange it is entitled to remit abroad.

Article 12: The wages, salaries or other legitimate income of foreign employees of an equity joint venture, after payment of personal income tax under the tax laws of the People's Republic of China, may be remitted abroad in accordance with foreign exchange regulations.

Article 13: The operating periods of equity joint ventures may be handled differently according to their particular line of business and circumstances. Equity joint ventures engaged in certain lines of business shall specify operating periods in their contracts, while equity joint ventures engaged in other lines of business may choose whether or not to specify their operating periods. In the cases of equity joint ventures that specify operating periods, if the parties to the venture agree to extend the operating period, the venture shall apply to the examination and approval authority six months before the expiration of the operation period. The examination and approval authority shall, within one month after receipt of the application, decide whether to approve or disapprove.

Article 14: If there occur heavy losses, the failure of a party to perform its obligations under the contract and the articles of association, force measure, etc., the equity joint venture may terminate the contract through consultation and agreement by the parties, and subject to approval by the examination and approval authority and to registration with the state department for industry and commerce administration. In cases of losses caused by a breach of contract, the financial responsibility shall be borne by the party that has breached the contract.

Article 15: Disputes arising between parties to an equity joint venture which the board of directors fails to settle through consultation may be settled through conciliation or arbitration by a Chinese arbitration body or through arbitration by an arbitration body agreed upon by the parties.

All parties to an equity joint venture who do not have an arbitration contract beforehand or who do not reach a written arbitration agreement afterward may appeal to the People's Court.

Article 16: This law comes into force as of the date of promulgation.